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REPORT
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EXTENSION OF NONDISCRIMINATORY TREATMENT TO PRODUCTS OF THE CZECH AND SLOVAK FEDERAL REPUBLIC

OCTOBER 18 (legislative day, OCTOBER 2), 1990.—Ordered to be printed

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Mr. BENTSEN, from the Committee on Finance,
submitted the following

REPORT

[To accompany S.J. Res. 361]

The Committee on Finance to, which was referred the joint resolution (S.J. Res. 361) to approve the extension of nondiscriminatory treatment to the products of the Czech and Slovak Federal Republic ("Czechoslovakia"), having considered the same, reports favorably thereon without amendment and recommends that the joint resolution do pass.

I. SUMMARY

Senate Joint Resolution 361 would approve the extension of nondiscriminatory (most-favored-nation (MFN)) treatment to products imported into the United States from the Czech and Slovak Federal Republic ("Czechoslovakia"). The extension of reciprocal MFN treatment was one of the principal provisions of the trade agreement negotiated between the United States and Czechoslovakia and signed on April 12, 1990. On September 6, 1990, the President formally submitted the agreement and accompanying side letters to the Congress for its consideration, along with his proclamation extending nondiscriminatory treatment to imports from Czechoslovakia.

Under section 405(c) of the Trade Act of 1974, as amended by the Customs and Trade Act of 1990 (Public Law 101-382), the trade agreement and proclamation may take effect only if the House and Senate adopt a joint resolution of approval.

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On September 25, 1990, the House Committee on Ways and Means ordered favorably reported H.J. Res. 649, the companion to S.J. Res. 361.

II. General Explanation

A. THE STATUTORY FRAMEWORK

Title IV of the Trade Act of 1974 authorizes the President to extend MFN treatment to non-market economies not accorded MFN status if two conditions are met: (1) compliance with the freedom-of-emigration provisions under section 402 of the Trade Act of 1974 (the Jackson-Vanik amendment); and (2) conclusion of a bilateral commercial agreement under section 405 of the Trade Act of 1974 providing reciprocal nondiscriminatory treatment. Section 404 of the Trade Act of 1974 stipulates that MFN treatment shall remain in effect only as long as the bilateral commercial agreement is in effect. Section 404 also provides that the President may suspend or withdraw MFN treatment at any time.

(1) Compliance with freedom-of-emigration provisions

Section 402 of the Trade Act of 1974 (the Jackson-Vanik amendment) provides that products from certain non-market economies may not be accorded MFN status, and the country may not participate in U.S. financial credit or guarantee programs if the President determines that the country (a) denies its citizens the right or opportunity to emigrate; (b) imposes more than a nominal tax on visas or other documents required for emigration; or (c) imposes more than a nominal levy, fine, fee, or other charge on any citizen as a consequence of the desire to emigrate. A country may become eliglble for MFN treatment and U.S. financial programs and may conclude a commercial agreement only if the President submits a report to Congress indicating that the country does not violate these conditions. Alternatively, the President may waive the Jackson-Vanik requirements if he reports to Congress that a waiver will substantially promote the objectives of the law and if the President has received assurances that the emigration practices of the country will henceforth lead substantially to the achievement of the Jackson-Vanik objectives. The waiver authority may be extended by Presidential action for one-year periods, subject to Congressional review.

(2) Bilateral commercial agreement

Under section 405(b) of the Trade Act of 1974, all bilateral commercial agreements must:

(a) provide that the agreement is subject to termination or suspension for national security reasons;

(b) include safeguards against market disruption;

(c) provide for the protection of intellectual property;

(d) include dispute settlement provisions;

(e) include arrangements for the promotion and facilitation of trade; and

(f) provide for consultations to review the agreement and the status of bilateral commercial relations.

The agreement, including the extension of MFN treatment, must be limited to an initial period of three years. The agreement is, however, renewable for additional three-year periods if a staisfactory balance of concessions in trade and services has been maintained during the life of the agreement and if the President determines that acutal or foreseeable reductions in U.S. tariffs and nontariff barriers to trade resulting from multilateral negotiations are satisfactorily reciprocated by the other party to the agreement.

B. PRESIDENTIAL ACTION AND CONGRESSIONAL CONSIDERATION

(1) Presidential action

On February 20, 1990, the President waived the application of sections 402(a) and (b)—the Jackson-Vanik requirements—with respect to Czechoslovakia upon his determination that such a waiver would substantially promote the Act's objectives relating to freedom of emigration. The President's report to the Congress stated that the Czechoslovak Government had implemented "sweeping" liberal emigration policies and eliminated virtually all of the emigration restrictions imposed by the previous Communist regime. The President reported that new travel regulations issued on January 1, 1990, require only that potential emigrants possess a valid passport and a foreign immigrant visa. The President also reported that passports are now issued routinely and are valid for travel to all countries. Further, the President stated that Czechoslovak citizens no longer needed exit visas to travel, and that all pending bilateral family reunification cases had been resolved. The waiver made Czechoslovakia eligible immediately for U.S. Government credits, credit guarantees, and investment guarantees. On June 3, 1990, the President notified Congress of his intention to extend the waiver for Czechoslovakia for the year beginning July 4, 1990.

On April 12, 1990, U.S. Trade Representative (USTR) Carla Hills and Czechoslovak Foreign Trade Minister Andrej Barcak signed a bilateral trade agreement. Accompanying side letters on trade and financial matters, intellectual property rights and tourism are also integral parts of the agreement. The agreement, side letters, and a proclamation proclaiming MFN treatment for Czechoslovakia were submitted formally to the Congress on September 6, 1990.

(2) Congressional consideration

Sections 405(c) and 407(c) of the Trade Act of 1974, as amended by the Customs and Trade Act of 1990 (Public Law 101-382) provide that a trade agreement and the Presidential proclamation granting MFN status may take effect only after the House and Senate adopt a joint resolution of approval. The joint resolution is subject to the "fast-track" implementing procedures of the House and Senate under section 151 of the Trade Act of 1974, as amended. Under those procedures the House and Senate have a maximum of 90 legislative days to enact a joint resolution of approval, and the resolution is not subject to amendment.

On September 10, 1990, S.J. Res. 361 and H.J. Res. 649—identical resolutions approving the proclamation of nondiscriminatory treatment to imports of products from Czechoslovakia—were introduced in the Senate and House, respectively. S.J. Res. 361 was re-

ferred to the Senate Committee on Finance and H.J. Res. 649 to the House Committee on Ways and Means. On September 10, 1990, the Committee on Finance issued a press release requesting public comment on the agreement. The Committee received a number of comments, the majority of which favored the approval of the agreement and the extension of MFN to Czechoslovakia. On September 25, 1990, the Committee on Ways and Means ordered H.J. Res. 649 favorably reported to the House of Representatives.

C. SUMMARY OF THE U.S.-CZECHOSLOVAK TRADE AGREEMENT

The U.S.-Czechoslovak trade agreement contains numerous provisions designed to facilitate two-way trade between the two countries. The agreement provides that the United States and Czechoslovakia each will apply to the other the provisions of the General Agreement on Tariffs and Trade (GATT) and will participate in negotiations aimed at improving the GATT Codes on Standards, Import Licensing, Customs Valuation, and Antidumping. Each country will accord MFN treatment to the products of the other, and will also accord to the other's products MFN treatment with respect to the allocation of and access to currency needed to pay for such imports.

The agreement obligates each country to maintain a "satisfactory balance of market access opportunities," taking into account such factors as tariffs and other charges on goods and services, non-tariff barriers, the effects of state-to-state trade agreements, and the extent of responsibilities and rights deriving from the GATT Codes noted above. Under the agreement, trade between the two countries is to be conducted by means of contracts concluded as exercises of independent commercial judgment on the basis of nondiscrimination and customary commerical considerations. In addition, neither country will require or encourage barter or countertrade.

Additional provisions in the agreement are designed to promote trade and facilitate transactions between the two countries. Included in the agreement are measures that:

(a) facilitate the holding of trade promotion events;

(b) ease the establishment of "commercial representations," the direct hire of employees, importation of office equipment, access to office space and living accommodations, employment of agents and distributors, the stocking and distribution of samples and replacement parts, advertising and market research;

(c) improve the transparency of laws, regulations and rulings that affect trade, investment and other commercial matters;

(d) permit government commercial offices to hire directly host- and third-country nationals and permit access to officials at the federal and subfederal levels;

(e) require the trade between the two countries be conducted in U.S. dollars or other convertible currencies, unless the parties to individual transactions agree othewise;

(f) bind the countries not to restrict the export of convertible currencies or deposits obtained in connection with trade in goods and services and require the parties to provide nondis-

criminatory treatment with respect to a range of financial transactions;

(g) provide adequate and effective protection of intellectual property;

(h) provide procedures for the settlement of disputes and guarantee companies and nationals of each country access to the other's courts and administrative bodies; and

(i) establish a Joint Commercial Commission to review the operation of the agreement and settle disputes promptly.

In addition, four side letters were negotiated between the two countries that are an integral part of the trade agreement. In the first side letter, Czechoslovakia agreed to reduce the rule of state-to-state trade agreements which provide for imports of specified quantities of goods; to ensure prompt passage of legislation changing the authorization process of commercial representations to a simple registration process and to move toward a simple registration process for entities engaged in foreign trade; to make its currency convertible as soon as possible; and to ensure that state-trading enterprises operate in accordance with GATT principles. The second side letter expands in considerable detail upon the commitments Czechoslovakia has made relating to intellectual property rights. The third side letter concerns the promotion of tourism and travel-related investment and trade, and for the fourth side letter sets forth the terms of reference of the U.S.-Czechoslovak Joint Commercial Commission, as referenced above.

D. U.S.-CZECHOSLOVAKIAN TRADE AND IMPACT OF TRADE AGREEMENT

(1) U.S.-Czechoslovakian trade

U.S. trade with Czechoslovakia stagnated through most of the 1980's. After reaching a peak of $250 million in 1980, two-way trade declined to $121 million in 1983, and has averaged approximately $130 million over the past three years. Since 1983, the United States has posted a deficit in bilateral trade with Czechoslovakia, averaging $31 million annually in the 1987–1989 period.

U.S. exports to Czechoslovakia reached $51 million in 1989, down from $54 million in 1988. U.S. imports from Czechoslovakia totaled $82 million in 1989, down from $85 million in 1988. In the first six months of 1990, U.S. exports reached $29.3 million, up six percent over the comparable period in 1989, while imports from Czechoslovakia totaled $36.9 million, two percent below half-year 1989 imports. Principal U.S. exports are hides and skins, fertilizers, cotton, synthetic fibers and yarns, and measuring and scientific instruments and apparatus. Leading imports from Czechoslovakia are tractors, costume jewelry, iron and steel products, footwear, glassware, and apparel. Imports of textiles are governed by a bilateral agreement negotiated under the Multifiber Agreement, and steel imports from Czechoslovakia are subject to a Voluntary Restraint Agreement.

(2) Impact of the trade agreement

The General Accounting Office (GAO) has estimated that granting MFN status to Czechoslovakia would reduce the weighted average U.S. tariff rate on dutiable products from 29.5 percent to an

estimated 5.2 percent (*see* GAO/NSIAD-90-298BR, September 1990). The sizable drop in the weighted average tariff weight is, according to the GAO, attributable to the fact that Czechoslovakia's exports are heavily weighted in favor of manufactured goods, which generally face high tariff rates under column 2 of the Harmonized Tariff Schedule. The GAO concluded, however, that even if there is a substantial increase in U.S. imports from Czechoslovakia, the impact on the United States would be extremely small since Czechoslovakia's share of U.S. imports is less than one-tenth of one percent. Even if all of Czechoslovakia's exports were diverted to the United States, the impact would be small since total Czechoslovak exports to all countries amount to only 5.5 percent of total U.S. imports.

The Committee expects that the benefits of the trade agreement would not, however, be one-way. Exports from the United States to Czechoslovakia should also benefit from MFN tariff rates. In fact, the drop in the tariff will be substantial for certain leading U.S. exports. The duty on fertilizers will, for example, drop from nine percent to three percent, the duty on synthetic fibers will plummet from 70 percent to zero, the tariff on synthetic filament yarn will fall from 52 percent to nine percent, and the tariff on tobacco will fall from 64 percent to 9.8 percent.

In addition, the Committee expects that increased Czechoslovakian exports to the United States will generate hard currency and provide the means for Czechoslovakia to import more goods necessary to improve its productivity and standard of living. Moreover, many other provisions of the agreement are designed to facilitate transactions between United States and Czechoslovakian companies and should lead to increased U.S. exports to and investment in Czechoslovakia.

The Committee believes that prompt enactment of the U.S.-Czechoslovak trade agreement is in the best interest of the United States. Czechoslovakia has witnessed dramatic and rapid changes in both its political and economic systems over the past year. The transition from the communist regime to a democratic system of freely elected representatives was accomplished through peaceful means. Laws have been passed that guarantee freedom of emigration, speech, religion and the press.

The new Government has introduced legislation to strengthen market mechanisms and accelerate Czechoslovakia's integration into the West. In addition, in September 1990, Czechoslovakia became a member of the International Monetary Fund and the International Bank for Reconstruction and Development (the World Bank), thus advancing its integration into the West. On September 17, 1990, the Czechoslovak Federal Assembly approved the Government's economic reform plans. The plans call for the national currency, the koruna, to become convertible on January 1, 1991 for current account transactions (except repatriation of profits), with full convertibility expected by 1992. In addition, the plan outlines the procedures for the privatization of small and large enterprises.

Although Czechoslovakia does not have a large hard currency debt, and there are no severe shortages of consumer goods, the legacy of central planning is major distortions in the economy. En-

vironmental pollution is a serious problem, and will be expensive to correct. Further, Czechoslovakia has been almost wholly dependent on the Soviet Union for oil supplies, and the economy is reeling from the combined effects of curtailed shipments from the Soviet Union, higher world oil prices, and the Soviets' requirement that all trade, including oil trade, be conducted in hard currency as of January 1, 1991.

U.S. companies can help Czechoslovakia with its transition to a market-oriented system. The prompt enactment of the U.S.-Czechoslovakia trade agreement is a necessary step toward that end. Accordingly, the Committee supports enactment of S.J. Res. 361 and the extension of MFN treatment of Czechoslovakia.

III. Vote of the Committee in Reporting the Bill

In compliance with section 133 of the Legislative Reorganization Act of 1946, the Committee states that S.J. Res. 361 was ordered favorably reported by voice vote.

IV. Budgetary Impact of the Bill

In compliance with sections 308 and 403 of the Congressional Budget Act of 1974, and paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate, the following letter has been received from the Congressional Budget Office regarding the budgetary impact of the bill:

U.S. Congress,
Congressional Budget Office,
Washington, DC, October 3, 1990.

Hon. Lloyd Bentsen,
Chairman, Committee on Finance,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S.J. Res. 361, a joint resolution approving the extension of Most Favored Nation (MFN) status to Czechoslovakia. The CBO estimates that extending MFN status to Czechoslovakia would cause a loss in federal revenues of $15 million in fiscal year 1991.

Under Title IV of the Trade Act of 1974, two conditions must be met before certain nonmarket economies may be accorded MFN status: (1) the President must certify that the country meets certain freedom-of-emigration requirements (the Jackson-Vanick requirements) or waives these requirements; and (2) a bilateral trade agreement is in effect.

On February 20, 1990, the President waived the application of the Jackson-Vanik requirements with respect to Czechoslovakia. The President subsequently notified Congress of his intention to extend the waiver for Czechoslovakia for the year beginning July 4. On April 12, 1990, the United States and Czechoslovakia entered into a trade agreement that would, once approved by Congress, provide MFN treatment for Czechoslovakia. On September 6, 1990, the President transmitted to the Congress the trade agreement and the proclamation proclaiming MFN treatment for Czechoslovakia. Granting Czechoslovakia most-favored-nation status would result in a loss of customs duties because imports from Czechoslovakia

would be subject to lower tariff rates. CBO estimates the loss of federal customs duties to be $15 million in fiscal year 1991.

If you wish further details, please feel free to contact me or your staff may wish to contact John Stell at 226-2720.

Sincerely,

ROBERT D. REISCHAUER,
Director.

V. REGULATORY IMPACT OF THE BILL

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee states that the bill will not significantly regulate any individuals or businesses, will not impact on the personal privacy of individuals, and will result in no significant additional paperwork.

VI. CHANGES IN EXISTING LAW

Pursuant to the requirements of paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the resolution, S.J. Res. 361, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

TITLE 19—CUSTOMS DUTIES

CHAPTER 18—IMPLEMENTATION OF THE HARMONIZED TARIFF SCHEDULE

HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES (1990) ANNOTATED FOR STATISTICAL REPORTING PURPOSES

GENERAL NOTES

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(b) RATE OF DUTY COLUMN 2.—Notwithstanding any of the foregoing provisions of this note, the rates of duty shown in column 2 shall apply to products, whether imported directly or indirectly, of the following countries and areas pursuant to section 401 of the Tariff Classification Act of 1962, to section 231 or 257(e)(2) of the Trade Expansion Act of 1962, to section 404(a) of the Trade Act of 1974 or to any other applicable section of law, or to action taken by the President thereunder:

Afghanistan
Albania
Bulgaria
Cuba
[Czechoslovakia]
Estonia
German Democratic Republic
Kampuchea
Laos
Latvia
Lithuania
Mongolia
North Korea
Romania
Union of Soviet Socialist Republics
Vietnam

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